

**CITY OF LODI  
INFORMAL INFORMATIONAL MEETING  
"SHIRTSLEEVE" SESSION  
CARNEGIE FORUM, 305 WEST PINE STREET  
TUESDAY, JULY 8, 2003**

An Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was held Tuesday, July 8, 2003, commencing at 7:00 a.m.

**A. ROLL CALL**

Present: Council Members – Beckman, Hansen, and Howard

Absent: Council Members – Land and Mayor Hitchcock

Also Present: City Manager Flynn, City Attorney Hays, and City Clerk Blackston

**B. CITY COUNCIL CALENDAR UPDATE**

City Clerk Blackston reviewed the weekly calendar (filed).

**C. TOPIC(S)**

**C-1 "Discussion regarding swim teams"**

Parks and Recreation Director Goehring reported that prior to the 2001 swim season there were a large number of registrants and as a result it was necessary to create a sixth team. To accommodate the additional team the City entered into a year-to-year agreement with Twin Arbor Athletic Club, which offered the use of its pool facilities. This year's agreement is effective June 2 through July 27. The agreement can be terminated within 48 hours after receiving written notice. On June 13 staff sent a letter of termination (effective June 16) to Twin Arbor, due to alleged violations of the agreement. On June 18 at the direction of the City Manager, staff sent a letter to the manager of Twin Arbor rescinding the termination and reinstating the Dolphins team for the remainder of the swim season. On July 2 a similar notice was mailed to each affected Dolphins team member's parent. Mr. Goehring reported that this matter was discussed at the Parks and Recreation Commission meeting last night.

Jennifer Alberti, Recreation Supervisor, stated that most of the difficulties surrounding this issue were due to a lack of communication. She noted that since February five meetings were held, at which coaches discussed the following issues:

- Multiple swim practices – The Twin Arbor Dolphins swim team had been allowed to swim in either morning or evening practice sessions; however, the agreement specifically states that the practice time must be between 4:00 to 8:00 p.m.;
- Paid coaching – For the past two years assistant coaches of the Dolphins team were paid; whereas, none of the assistant coaches on the other five teams were paid. Ms. Alberti noted that the assistant coach on the Dolphins team is no longer paid;
- Extended swim season – After the summer swim league ends, 20 to 30 members of the Dolphins team form and compete in a USA swim team;
- Recruiting from other teams – 90% of the Dolphins team is made up of transfers from existing swim teams. The Twin Arbor marketing department calls swim team members and encourages them to join the Dolphins team.
- Uneven teams – The Dolphins team initially had 130 swimmers. In an attempt to equal out the numbers, the Parks and Recreation Department gave the Dolphins coach the option of giving back 30 swimmers to distribute on other teams; however, the coach declined.
- Clinics – The Twin Arbor Dolphins swim team hosts clinics two months prior to the beginning of the season. Normally information regarding the clinics is mailed to swim program participants and is posted in the Parks and Recreation Department. This year Twin Arbor failed to forward information regarding the clinics to the Parks and

Recreation Department, so they were not able to notify the other swim team members.

- Donations – Typically swim teams ask for a donation of \$5 to \$10 in order to purchase swim team attire and pay for end of season parties. The Twin Arbor Dolphins team asks for a \$40 contribution in addition to charging a 10% to 15% mark up for tee shirts and sweat shirts.

Ms. Alberti reported that the Dolphins coach failed to attend any of the five meetings. After considering all of these issues, it was the Department's recommendation to disband the Dolphins swim team and redistribute the swimmers to the remaining five teams.

City Manager Flynn stated that the recommendation to disband the team came from the coaches to Ms. Alberti, to former Parks and Recreation Director Baltz, and then to the City Manager. He emphasized that the issue is equity among the teams.

In answer to Council Member Beckman, Ms. Alberti reported that the swim team program is for youth ages 3 to 18. She acknowledged that only members of Twin Arbor Athletic Club can join the Dolphins team and non-members have the choice of joining any of the other five teams. Ms. Alberti stated that the Parks and Recreation Department generally has 20 to 50 youth on a waiting list for the swim program. She reported that all swim coaches receive a \$300 stipend for their teams. The Dolphins coach is paid a salary through Twin Arbor.

#### PUBLIC COMMENTS:

- Mark Bowman stated that he was a parent of Dolphins team members and was surprised at the level of antagonism that had erupted over this matter. The Dolphins team currently has 117 members, which is below the 120 maximum that the summer swim league bylaws mandate. He explained that rather than having the coach of the Dolphins team choose which 30 members had to be transferred to other teams, they had requested that the Parks and Recreation Department make the decision. He believed that the perceived inequities as outlined by Ms. Alberti were negligible in terms of their effect on making the Dolphins team more competitive. The Dolphins team has never won a championship and most of the swimmers are young. The Twin Arbor Dolphins team coach is paid a salary because the facility has a separate swimming pool that needs to be managed. He pointed out that conflicting information was presented this morning, i.e. 1) that there were a lower number of swim program participants this year, and 2) there are 20 to 50 youth on a waiting list for the swim program. He believed the parents, not the coaches, should have made the determination whether swim team members should have to be transferred for equity reasons two weeks into the swim program. He stated that communication to parents should have been made by the Parks and Recreation Department. Contrary to Ms. Alberti's report, only five or six members of the Dolphins team participate in the USA swim program off season, which is not a violation of the City's rules. He believed the matter of multiple practices was a non-issue because Dolphins team members are offered a choice of morning or afternoon practice, but the total amount of time in the pool was the same as other swim teams.
- Dennis Kaufmann, Manager of the Twin Arbor Athletic Club, stated that there was no attempt to draft other swim team members; they were merely trying to sell memberships and compete in the private enterprise environment. He reported that no members of the public had contacted him with grievances related to the Dolphins swim team. He acknowledged that he was serving on jury duty at the time letters were sent by the City.

In reply to Council Member Hansen, Mr. Goehring stated that the agreement between the City and Twin Arbor Athletic Club benefited both parties because the Parks and Recreation Department needed more pools to accommodate the number of swim program participants and Twin Arbor wanted to expand its existing swim program.

- Todd Hansen, parent of three Dolphins team members, stated that Ms. Alberti had informed him that the problem was inequity in numbers. He found it odd that they chose to resolve the problem by affecting the most number of children. The City allowed transfers from other teams to Twin Arbor. He pointed out that Ms. Alberti allowed 130 youth to sign up for the Dolphins team. The sign-up period was extended two weeks because the number of applicants did not reach expectation levels from previous years. He believed that the City chose to disband the Dolphins team rather than taking responsibility for allowing the transfers and resulting inequity in numbers.
- Luann Casey reported that she and her husband have volunteered over 24 years in the City swim program. She had voiced concerns to the City when it was originally considering the agreement with Twin Arbor. She believed that these, or similar issues, would surface every year because they are inherent to incorporating a volunteer program with a private entity. She was pleased that Mr. Goehring had taken the position of Parks and Recreation Director, and reported that the former Director never returned her phone calls and refused to discuss this issue with her.

City Attorney Hays noted that the agreement with Spare Time Incorporated, d.b.a. Twin Arbor Athletic Club, states that they are not to do recruiting, and that practices are to be held from 4:00 to 8:00 p.m. only. The Twin Arbor facility was not available for City teams to use. Competitions are only held at the Twin Arbor pool when the Dolphins team and another City team participate together. He believed it was unfair to suggest that the Parks and Recreation Department should have communicated individually with parents of Dolphins team members, as they are under the aegis of Twin Arbor.

- John Conner, coach of the Piranhas swim team, clarified that the decision to disband the Dolphins team was not made by the coaches, nor were the coaches involved when Twin Arbor was added to the City swim program. He stated that the coaches' main concern is that the teams be equal in number.
- Anne Cecchetti, coach of the Tritons swim team, concurred with Mr. Conner. She believed that the issues could be resolved and noted that this situation underscored the need for an aquatics center in Lodi.

Mr. Flynn acknowledged the error in his earlier statement regarding the recommendation having come from the coaches. He noted that he was meeting today with John Griffin and other members of the swim community to discuss ways of raising funds to build the aquatics center.

In reply to Council Member Hansen, Mr. Goehring reported that the Parks and Recreation Commission had supported staff's original decision to terminate the contract with Twin Arbor. At last night's meeting the Commission suggested that the Dolphins team not be disrupted during this swim season, and to evaluate the Twin Arbor situation and the City swim program goals and objectives at the conclusion of the season for possible amendments to the Memorandum of Understanding next year.

Council Member Hansen suggested that staff look into whether other cities have agreements with private sports facilities and what type of contracts and issues they have had. He stated that the main goal for the swim program is to have as many youth as possible participate.

Mayor Pro Tempore Howard saw no problem with Dolphins team members participating on the USA swim team, that their donation request is higher than others, or that they had a paid coach. She suggested that the contract be amended in the future to change the termination period from 48 hours to two weeks, noting that 48 hours is not enough time to receive information and inform effected parties. In addition she recommended that future written notices be sent to the manager of Twin Arbor, the coach, and assistant coach.

*Continued July 8, 2003*

She pointed out that the Parks and Recreation Department had two months to figure out the number of members on each team and the matter should have been resolved at that time, rather than two weeks into the program.

Council Member Hansen suggested that the contract also make it mandatory for coaches to attend meetings.

**D. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS**

None.

**E. ADJOURNMENT**

No action was taken by the City Council. The meeting was adjourned at 8:13 a.m.

ATTEST:

Susan J. Blackston  
City Clerk

## Mayor's & Council Member's Weekly Calendar

### WEEK OF JULY 8, 2003

#### Tuesday, July 8, 2003

- 7:00 a.m. Shirtsleeve Session  
1. Discussion regarding swim teams (PR)
- 5:30 – 7:00 p.m. **Howard.** 18<sup>th</sup> Anniversary and ribbon cutting for Arbor Senior Apartments, 115 Louie Avenue.

#### Wednesday, July 9, 2003

- 6:30 – 8:30 p.m. San Joaquin County Public Works Department's public meeting on the State Route 88 Bypass Feasibility Study, at the Mokelumne Rural County Fire Protection District, 13157 E. Brandt Road, Lockeford.

#### Thursday, July 10, 2003

- 5:30 – 7:00 p.m. **Land.** Grand opening and ribbon cutting for Schaffer, Suess & Boyd (SSB), 1949 W. Kettleman Lane. SSB will host an open house beginning at 4:00 p.m.

#### Friday, July 11, 2003

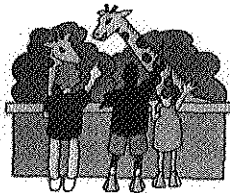
- Noon Chamber of Commerce Governmental Relations Committee meeting, Chamber Conference Room.

#### Saturday, July 12, 2003

#### Sunday, July 13, 2003

#### Monday, July 14, 2003

- 6:00 p.m. Micke Grove Zoo and Zoological Society dedication of the Alice S. Hunter Building, an education and meeting facility.



Memorandum of Understanding  
(Summer Swim League)

THIS Memorandum of Understanding ("Agreement") is entered into as of this 21<sup>st</sup> day of April, 2003, by Spare Time Incorporated d.b.a. Twin Arbor Athletic Club, ("TAAC") and THE CITY OF LODI, acting by and through its Parks and Recreation Department ("City").

Background

A. City operates an eight-week summer swim league at the City owned Enze Pool, Lodi High School Pool and Tokay High School Pool. Currently, the City has six teams, each comprised of over 100 participants, TAAC also operates swimming programs at its privately owned pool facilities at 2040 W. Cochran Rd, Lodi and 1900 S Hutchins Rd, Lodi.

B. TAAC desires to organize a team to participate in the summer swim league again. City is willing to permit TAAC to do so on a trial basis. However, in order to accommodate the sixth team, City requires the use of one or both of TAAC's pool facilities.

C. Accordingly, the parties enter into this Agreement on the terms and conditions set forth below.

Agreement

In consideration of their mutual covenants, the Parties agree as follows:

1. Participation. TAAC and City agree that TAAC will establish a sixth team named the "Dolphins" comprised of the members of its club to participate in the City's summer swim league.

2. Administration. Generally, the Dolphins team and its members will be treated identically to the City teams with the exceptions that the Dolphins coach may be paid an additional stipend by TAAC, and the Dolphins will practice at TAAC's facilities. Dolphins team members will register with and pay the City's Parks and Recreation Program. City will pay the Dolphins coach the same stipend paid to the City coaches. City shall have the right to oversee and supervise the Dolphin's coach and program, including all appropriate background checks of Dolphin's staff (whether paid or volunteer) and monitoring practices and swim meets to ensure compliance with all applicable laws, regulations, and City standards. TAAC shall cooperate with City's efforts to perform background checks and monitoring.

3. Fees/Recruiting Prohibited. No fees, other than TAAC's standard membership fee, shall be charged to any Dolphin team member. However, TAAC like other teams may accept donations and have fundraisers to solicit sponsorships. TAAC shall not engage in any efforts to recruit members during swim meets. TAAC shall not recruit members of City teams and TAAC members who wish to retain their affiliation with a City team must not be pressured

to join the TAAC team. However, TAAC will be permitted to inform its members that it is establishing a team to compete in the City's summer swim league and that TAAC members may join TAAC's team by signing up through the City's Parks and Recreation Department.

4. Use of Facilities. During the term of this Agreement, TAAC agrees to allow the use of its facilities, including but not limited to the showers, dressing areas, bathrooms, and spectator areas for Dolphins practice during the hours of 4:00 p.m. 8:00 p.m., Monday through Friday and for swim meets between any teams in the summer swim league from 8:00 a.m. to 12:00 p.m. on Sunday. No fees shall be charged to (1) the City for use TAAC's facilities; or (2) any child or spectator for any purpose, including but not limited to entry fees, or shower fees, during the swim meets. TAAC shall have the right to designate which of its pool facilities will be used for practices on whatever notice it deems appropriate and shall also have the right to designate which of its Lodi pool facilities will be used for swim meets on at least 30 days written notice to City. The meets held at TAAC pools will involve the Dolphins and a City team. At no time will two City teams use TAAC pool for swim meets.

5. Term. The term of this Agreement shall be from June 2<sup>nd</sup>, 2003 to July 27<sup>th</sup>, 2003 unless otherwise terminated as provided herein.

6. Maintenance. TAAC shall, at its own expense, maintain its premises and any buildings and or equipment on or attached to the premises in a safe condition, in good repair and in a manner suitable to City. City shall be entitled to inspect TAAC's pool facilities upon demand to ensure compliance with this paragraph.

7. Utilities. TAAC shall provide utility service to the premises at its sole cost and expense.

8. Attorney Fees. In any action between the parties arising out of or related to this contract, the prevailing party shall be entitled to all expenses incurred therefor, including reasonable attorney fees.

9. Optional Termination. Either party may terminate this Agreement in writing upon at least 48 hours prior written notice. In the event of an early termination, the City, in its sole discretion, will determine which one of the following options to give to the entire Dolphins team:

- a. Join another of the five teams in the Summer Swim League;
- b. Continue on the Dolphins team for the remainder of the season with a coach to be supplied by the City without the use of the TAAC facilities; or
- c. Terminate their participation in the league and receive a pro-rated refund of the fees paid to the Parks and Recreation Department.

10. Indemnity and Insurance.

a. Indemnification by City: Except to the extent caused by the negligence or intentional misconduct of TAAC or of any agent, servant or employee of TAAC, City ("Indemnitor") shall, at its sole cost and expense, indemnify and hold harmless TAAC and all associated, affiliated, allied and subsidiary entities of TAAC, now existing or hereinafter created, and their

respective officers, boards, employees, agents, attorneys, and contractors (hereinafter referred to as "Indemnitees"), from and against:

i. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of City, its personnel, employees, agents, contractors or subcontractors on the Premises, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, or any other right of any person, firm or corporation, to the extent arising out of or resulting from the operation and/or maintenance of the summer swim league or City's failure to comply with any applicable federal, state or local statute, ordinance or regulation.

b. Indemnification by TAAC: Except to the extent caused by the negligence or intentional misconduct of City or of any agent, servant or employee of City, TAAC ("Indemnitor") shall, at its sole cost and expense, indemnify and hold harmless City and all associated, affiliated, allied and subsidiary entities of City, now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys, and contractors (hereinafter referred to as "Indemnitees"), from and against:

i. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of TAAC, its personnel, employees, agents, contractors or subcontractors on the Premises, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, or any other right of any person, firm or corporation.

d. Defense of Indemnitees: In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Indemnitor shall, upon reasonable prior written notice from any of the Indemnitees, at Indemnitor's sole cost and expense, resist and defend the same with legal counsel mutually selected by the parties; provided however, that the parties must not admit liability in any such matter without written consent, which consent must not be unreasonably withheld, conditioned or delayed, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without prior written consent. The indemnifying party's duty to defend shall begin upon receipt of a written notice identifying with specificity the allegations that give rise to this duty to defend and shall be co-extensive with the indemnifying party's indemnification obligation.

e. Notice, Cooperation and Expenses: Each party must give the other prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this paragraph. Nothing herein shall be deemed to prevent either party from cooperating with the other and participating in the defense of any litigation by its own counsel. However, Indemnitor shall pay all reasonable expenses incurred by Indemnitees in response to



any such actions, suits or proceedings. These expenses shall include all reasonable out-of-pocket expenses such as reasonable attorney fees and shall also include the reasonable value of any services rendered by Indemnites' attorney, and the actual reasonable expenses of Indemnites' agents, employees or expert witnesses, and disbursements and liabilities assumed by Indemnites in connection with such suits, actions-or proceedings but shall not include attorneys' fees for services that are unnecessarily duplicative of services provided Indemnites by Indemnitor.

If Indemnitor requests Indemnitee to assist it in such defense, then Indemnitor shall pay all reasonable expenses incurred by Indemnitee in response thereto, including defending itself with regard to any such actions, suits or proceedings. These expenses shall include all reasonable out-of-pocket expenses such as attorney fees and shall also include the reasonable costs of any services rendered by Indemnitee's attorney, and the actual reasonable expenses of Indemnitee's agents, employees or expert witnesses, and disbursements and liabilities assumed by Indemnitee in connection with such suits, actions or proceedings.

f. Insurance: During the term of the Agreement, both parties must maintain, or cause to be maintained, in full force and effect and at their sole cost and expense, the following types and limits of insurance:

i. Worker's compensation insurance meeting applicable statutory requirements and employer's liability insurance with minimum limits of One Hundred Thousand Dollars (\$100,000.00) for each accident.

iii. Comprehensive commercial general liability insurance with minimum limits of One Million Dollars (\$1,000,000.00) as the combined single limit for each occurrence of bodily injury, personal injury and property damage.

iv. All policies other than those for Worker's Compensation shall be written on an occurrence and not on a "claims made" basis.

v. The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.

g. Named Insureds: All policies, except for workers compensation policies, shall name City and all of their associated, affiliated, allied and subsidiary entities, now existing or hereafter created, and their respective officers, boards, commissions, employees, agents and contractors, as their respective interests may appear as additional insureds (herein referred to as the "Additional Insureds"). Each policy which is to be endorsed to add Additional Insureds hereunder, shall contain cross-liability wording, as follows:

"In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder."

i. Cancellation of Policies of Insurance: TAAC's insurance policies maintained pursuant to this Agreement shall contain the following endorsement:

j. Self-Insurance: The City's insurance requirements set forth herein may be satisfied by a self insurance program that complies with all laws and regulations governing self insurance.

If to City, to: City of Lodi Parks & Rec. Dept  
P. O. Box 3006  
221 W. Pine Street  
Lodi, CA 94240  
Fax # (209) 333-0162  
Attn: Roger Baltz

15. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

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17. Miscellaneous.

a. TAAC and City represent that each, respectively, has full right, power, and authority to execute this Agreement.

b. This Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Agreement must be in writing and executed by both parties.


c. This Agreement shall be construed in accordance with the laws of the State of California.

This Agreement was executed as of the date first set forth above and effective as of the date set forth in introduction above.

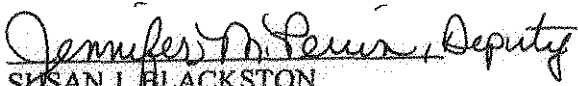
CITY OF LODI, a municipal corporation

TWIN ARBORS ATHLETIC CLUB


  
H. DIXON FLYNN  
City Manager

  
DENNIS KAUFMAN

ATTEST:

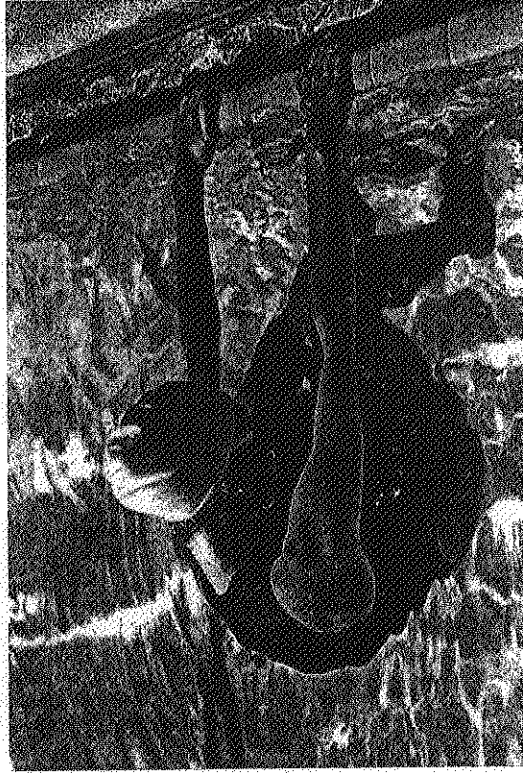
  
for SUSAN J. BLACKSTON  
City Clerk

APPROVE AS TO FORM:

  
RANDALL A. HAYS  
City Attorney

# TEAM ISSUES

- MULTIPLE SWIM PRACTICES
- PAID COACHING
- EXTENDED SEASON
- RECRUITING FROM OTHER TEAM
- UNEVEN TEAMS
- CLINICS
- COACHES MEETING ATTENDANCE



*filed 7-8-03*



**Parks and Recreation Department**  
*Creating community through people, parks & programs*

June 13, 2003

Dear Dolphin Swim Team Members:

We are writing to inform you that there will not be a Twin Arbors Dolphin swim team participating in the City summer swim league program. We will be happy to either exchange your registration for a complete refund or transfer you to a Parks and Recreation swim team. If you choose to transfer, please indicate your team preference from the list below and return this letter with your choice in the enclosed postage paid envelope by Friday, June 20, 2003. If we do not receive a returned letter by June 20, 2003, we will process a refund.

**Participants Name:**

\_\_\_\_\_  
\_\_\_\_\_

- |                          |                 |                          |                |
|--------------------------|-----------------|--------------------------|----------------|
| <input type="checkbox"/> | <b>Marlins</b>  | <input type="checkbox"/> | <b>Sharks</b>  |
| <input type="checkbox"/> | <b>Piranhas</b> | <input type="checkbox"/> | <b>Tritons</b> |
| <input type="checkbox"/> | <b>Seals</b>    | <input type="checkbox"/> | <b>Refund</b>  |

The Lodi Parks and Recreation Department tries to offer the best quality service to the public. We hope this does not discourage you or any member of your family in participating in other activities we offer and we look forward to hearing from you in the future.

If you have any questions or concerns, please feel free to contact our office at 333-6742. Office hours are 8:00 a.m. to 5:00 p.m., Monday – Friday.

Thank you for your understanding and we apologize for any hardship this may have imposed on you and your child.

Sincerely,

Jennifer Alberti  
Recreation Supervisor

JA:tl

125 N. Stockton Street  
Lodi, CA 95240

Website: [www.lodi.gov](http://www.lodi.gov)  
Email: [prdept@lodi.gov](mailto:prdept@lodi.gov)

(209) 333-6742  
FAX: (209) 333-0162

CITY COUNCIL

SUSAN HITCHCOCK, Mayor  
EMILY HOWARD,  
Mayor Pro Tempore  
JOHN BECKMAN  
LARRY D. HANSEN  
KEITH LAND

# CITY OF LODI

CITY HALL, 221 WEST PINE STREET  
P.O. BOX 3006  
LODI, CALIFORNIA 95241-1910  
(209) 333-6702  
FAX (209) 333-6807  
<http://www.lodi.gov>

H. DIXON FLYNN  
City Manager  
SUSAN J. BLACKSTON  
City Clerk  
RANDALL A. HAYS  
City Attorney

June 13, 2003

Mr. Dennis Kaufmann  
Twin Arbors Athletic Club  
1900 S. Hutchins Street  
Lodi CA 95242

Dear Mr. Kaufman:

This letter serves as the City of Lodi's written notification terminating the Memorandum of Understanding entered into on April 16, 2003, between the City of Lodi and Twin Arbors Athletic Club. Termination shall become effective on June 16, 2003.

Swimmers currently assigned to the Dolphin swim team will be placed on one of the City teams as designated by Parks and Recreation staff or be provided a refund.

Sincerely,

H. Dixon Flynn  
City Manager

HDF/RB:tl

CITY COUNCIL

SUSAN HITCHCOCK, Mayor  
EMILY HOWARD,  
Mayor Pro Tempore  
JOHN BECKMAN  
LARRY D. HANSEN  
KEITH LAND

# CITY OF LODI

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H. DIXON FLYNN  
City Manager  
SUSAN J. BLACKSTON  
City Clerk  
RANDALL A. HAYS  
City Attorney

June 18, 2003

Mr. Dennis Kaufmann  
Twin Arbors Athletic Club  
1900 S. Hutchins Street  
Lodi CA 95242

Dear Mr. Kaufman:

The City has decided to rescind my previous letter dated June 13, 2003. The Dolphins swim team will continue their use of the Twin Arbors pool for the Summer Swim League.

Sincerely,

H. Dixon Flynn  
City Manager

HDF/RB:tl

Memorandum of Understanding  
(Summer Swim League)

THIS Memorandum of Understanding ("Agreement") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2003, by Spare Time Incorporated d.b.a. Twin Arbor Athletic Club, ("TAAC") and THE CITY OF LODI, acting by and through its Parks and Recreation Department ("City").

Background

- A. City operates an eight-week summer swim league at the City owned Enze Pool, Lodi High School Pool and Tokay High School Pool. Currently, the City has six teams, each comprised of over 100 participants, TAAC also operates swimming programs at its privately owned pool facilities at 2040 W. Cochran Rd, Lodi and 1900 S Hutchins Rd, Lodi.
- B. TAAC desires to organize a team to participate in the summer swim league again. City is willing to permit TAAC to do so on a trial basis. However, in order to accommodate the sixth team, City requires the use of one or both of TAAC's pool facilities.
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3. Fees/Recruiting Prohibited. No fees, other than TAAC's standard membership fee, shall be charged to any Dolphin team member. However, TAAC like other teams may accept donations and have fundraisers to solicit sponsorships. TAAC shall not engage in any efforts to recruit members during swim meets. TAAC shall not recruit members of City teams and TAAC members who wish to retain their affiliation with a City team must not be pressured



to join the TAAC team. However, TAAC will be permitted to inform its members that it is establishing a team to compete in the City's summer swim league and that TAAC members may join TAAC's team by signing up through the City's Parks and Recreation Department.

4. Use of Facilities. During the term of this Agreement, TAAC agrees to allow the use of its facilities, including but not limited to the showers, dressing areas, bathrooms, and spectator areas for Dolphins practice during the hours of 4:00 p.m. 8:00 p.m., Monday through Friday and for swim meets between any teams in the summer swim league from 8:00 a.m. to 12:00 p.m. on Sunday. No fees shall be charged to (1) the City for use TAAC's facilities; or (2) any child or spectator for any purpose, including but not limited to entry fees, or shower fees, during the swim meets. TAAC shall have the right to designate which of its pool facilities will be used for practices on whatever notice it deems appropriate and shall also have the right to designate which of its Lodi pool facilities will be used for swim meets on at least 30 days written notice to City. The meets held at TAAC pools will involve the Dolphins and a City team. At no time will two City teams use TAAC pool for swim meets.

5. Term. The term of this Agreement shall be from June 2<sup>nd</sup>, 2003 to July 27<sup>th</sup>, 2003 unless otherwise terminated as provided herein.

6. Maintenance. TAAC shall, at its own expense, maintain its premises and any buildings and or equipment on or attached to the premises in a safe condition, in good repair and in a manner suitable to City. City shall be entitled to inspect TAAC's pool facilities upon demand to ensure compliance with this paragraph.

7. Utilities. TAAC shall provide utility service to the premises at its sole cost and expense.

8. Attorney Fees. In any action between the parties arising out of or related to this contract, the prevailing party shall be entitled to all expenses incurred therefor, including reasonable attorney fees.

9. Optional Termination. Either party may terminate this Agreement in writing upon at least 48 hours prior written notice. In the event of an early termination, the City, in its sole discretion, will determine which one of the following options to give to the entire Dolphins team:

- a. Join another of the five teams in the Summer Swim League;
- b. Continue on the Dolphins team for the remainder of the season with a coach to be supplied by the City without the use of the TAAC facilities; or
- c. Terminate their participation in the league and receive a pro-rated refund of the fees paid to the Parks and Recreation Department.

10. Indemnity and Insurance.

a. Indemnification by City: Except to the extent caused by the negligence or intentional misconduct of TAAC or of any agent, servant or employee of TAAC, City ("Indemnitor") shall, at its sole cost and expense, indemnify and hold harmless TAAC and all associated, affiliated, allied and subsidiary entities of TAAC, now existing or hereinafter created, and their

respective officers, boards, employees, agents, attorneys, and contractors (hereinafter referred to as "Indemnitees"), from and against:

i. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of City, its personnel, employees, agents, contractors or subcontractors on the Premises, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, or any other right of any person, firm or corporation, to the extent arising out of or resulting from the operation and/or maintenance of the summer swim league or City's failure to comply with any applicable federal, state or local statute, ordinance or regulation.

b. Indemnification by TAAC: Except to the extent caused by the negligence or intentional misconduct of City or of any agent, servant or employee of City, TAAC ("Indemnitor") shall, at its sole cost and expense, indemnify and hold harmless City and all associated, affiliated, allied and subsidiary entities of City, now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys, and contractors (hereinafter referred to as "Indemnitees"), from and against:

i. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of TAAC, its personnel, employees, agents, contractors or subcontractors on the Premises, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, or any other right of any person, firm or corporation.

d. Defense of Indemnitees: In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Indemnitor shall, upon reasonable prior written notice from any of the Indemnitees, at Indemnitor's sole cost and expense, resist and defend the same with legal counsel mutually selected by the parties; provided however, that the parties must not admit liability in any such matter without written consent, which consent must not be unreasonably withheld, conditioned or delayed, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without prior written consent. The indemnifying party's duty to defend shall begin upon receipt of a written notice identifying with specificity the allegations that give rise to this duty to defend and shall be co-extensive with the indemnifying party's indemnification obligation.

e. Notice, Cooperation and Expenses: Each party must give the other prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this paragraph. Nothing herein shall be deemed to prevent either party from cooperating with the other and participating in the defense of any litigation by its own counsel. However, Indemnitor shall pay all reasonable expenses incurred by Indemnitees in response to

any such actions, suits or proceedings. These expenses shall include all reasonable out-of-pocket expenses such as reasonable attorney fees and shall also include the reasonable value of any services rendered by Indemnitees' attorney, and the actual reasonable expenses of Indemnitees' agents, employees or expert witnesses, and disbursements and liabilities assumed by Indemnitees in connection with such suits, actions or proceedings but shall not include attorneys' fees for services that are unnecessarily duplicative of services provided Indemnitees by Indemnitor.

If Indemnitor requests Indemnatee to assist it in such defense, then Indemnitor shall pay all reasonable expenses incurred by Indemnatee in response thereto, including defending itself with regard to any such actions, suits or proceedings. These expenses shall include all reasonable out-of-pocket expenses such as attorney fees and shall also include the reasonable costs of any services rendered by Indemnatee's attorney, and the actual reasonable expenses of Indemnatee's agents, employees or expert witnesses, and disbursements and liabilities assumed by Indemnatee in connection with such suits, actions or proceedings.

f. Insurance: During the term of the Agreement, both parties must maintain, or cause to be maintained, in full force and effect and at their sole cost and expense, the following types and limits of insurance:

i. Worker's compensation insurance meeting applicable statutory requirements and employer's liability insurance with minimum limits of One Hundred Thousand Dollars (\$100,000.00) for each accident.

iii. Comprehensive commercial general liability insurance with minimum limits of One Million Dollars (\$1,000,000.00) as the combined single limit for each occurrence of bodily injury, personal injury and property damage.

iv. All policies other than those for Worker's Compensation shall be written on an occurrence and not on a "claims made" basis.

v. The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.

g. Named Insureds: All policies, except for workers compensation policies, shall name City and all of their associated, affiliated, allied and subsidiary entities, now existing or hereafter created, and their respective officers, boards, commissions, employees, agents and contractors, as their respective interests may appear as additional insureds (herein referred to as the "Additional Insureds"). Each policy which is to be endorsed to add Additional Insureds hereunder, shall contain cross-liability wording, as follows:

"In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder."

h. Evidence of Insurance: TAAC shall file certificates of insurance for each insurance policy required to be obtained in compliance with this paragraph, along with written evidence of payment of required premiums with the City annually during the term of the Agreement. City shall immediately advise TAAC of any claim or litigation that may result in liability to TAAC. TAAC shall immediately advise City of any claim or litigation that may result in liability to City.

i. Cancellation of Policies of Insurance: TAAC's insurance policies maintained pursuant to this Agreement shall contain the following endorsement:

"At least sixty (60) days prior written notice shall be given to City by the insurer of any intention not to renew such policy or to cancel, replace or materially alter same, such notice to be given by registered mail to the parties named in this paragraph of the Agreement."

j. Self-Insurance: The City's insurance requirements set forth herein may be satisfied by a self insurance program that complies with all laws and regulations governing self insurance.

13. Notices. Except as otherwise provided for in this Agreement to the contrary, all notices, demands and other communications required or contemplated to be given under this Agreement shall be in writing and shall be delivered either by (i) postage prepaid, Returned Receipt Requested, Registered or Certified Mail, (ii) local or air courier messenger service, (iii) personal delivery, or (iv) facsimile addressed to the party or parties for whom intended at the address shown below or such other address as the intended recipient previously shall have designated by written notice from time to time (provided, however, notice of a change of address or facsimile number shall be effective only upon receipt):

If to City, to:	City of Lodi Parks & Rec. Dept P. O. Box 3006 221 W. Pine Street Lodi, CA 94240 Fax # (209) 333-0162 Attn: Roger Baltz
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If to TAAC, to:	Twin Arbors Athletic Club
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15. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

16. Non-Waiver. Failure of either party to insist on strict performance of any of the conditions, covenants, terms or provisions of this Agreement or to exercise any of its rights hereunder shall not waive such rights, but either party shall have the right to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity.

17. Miscellaneous.

a. TAAC and City represent that each, respectively, has full right, power, and authority to execute this Agreement.

b. This Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Agreement must be in writing and executed by both parties.

c. This Agreement shall be construed in accordance with the laws of the State of California.

This Agreement was executed as of the date first set forth above and effective as of the date set forth in introduction above.

CITY OF LODI, a municipal corporation

TWIN ARBORS ATHLETIC CLUB

\_\_\_\_\_  
H. DIXON FLYNN  
City Manager

\_\_\_\_\_  
DENNIS KAUFMAN

ATTEST:

\_\_\_\_\_  
SUSAN J. BLACKSTON  
City Clerk

APPROVE AS TO FORM:

\_\_\_\_\_  
RANDALL A. HAYS  
City Attorney



**Parks and Recreation Department**  
*Creating community through people, parks & programs*

July 2, 2003

Ms. Janaee Stafford-Pegg  
Twin Arbors Athletic Club  
1900 S. Hutchins Street  
Lodi CA 95242

**RE: Dolphin Swim Team**

Dear Janaee:

Last evening I had an extensive conversation with Mark Bowman regarding his concerns about the status of the Dolphins Swim Team. He and I agreed that part of the problem could be the result of poor communication. To remedy an unclear situation, he asked that I provide two things: (1) written affirmation that the Dolphin Swim Team had, in fact, been reinstated by City Council action and (2) that they (Dolphins) would be able to continue as a team, and participate in the Lodi Parks and Recreation Summer Swim League for the remainder of the swim season.

This letter, then, rescinds the notice of termination dated June 13, 2003, and reaffirms City Manager Dixon Flynn's letter written on June 18, 2003, (attached).

As a course of expediency, I have asked staff to forward a copy of this letter to each Dolphin Swim Team family. Please feel free to disseminate this letter to whomever you deem appropriate.

If you have any questions or need further clarification regarding this issue, please do not hesitate to contact me at 209-333-6893. Enjoy the rest of the summer season!

Sincerely,

A handwritten signature in black ink, appearing to read "Tony C. Goehring".

Tony C. Goehring  
Parks and Recreation Director

Attachments: (2)

cc: Mr. Dennis Kaufman, Twin Arbors Athletic Club  
Members of the Dolphin Swim Team  
Mr. Dixon Flynn, City Manager

125 N. Stockton Street  
Lodi, CA 95240

Website: [www.lodi.gov](http://www.lodi.gov)  
Email: [prdept@lodi.gov](mailto:prdept@lodi.gov)

(209) 333-6742  
FAX: (209) 333-0162

## **LODI PARKS AND RECREATION DEPARTMENT**

125 N. Stockton St.

Lodi, Ca. 95240

333-6742

### **SUMMER SWIM LEAGUE BY-LAWS**

Revised as of January 25, 2002

The Lodi Summer Swim League is an introductory competitive swim league program under the direction of the Lodi Parks and Recreation Department. The league consists of teams within the Lodi Unified School District.

#### **I. PROGRAM OBJECTIVES**

- A. To serve as an introductory competitive swim program.
- B. To develop sportsmanship, leadership, and fellowship among all participants involved in the program.
- C. To provide an enriching and enjoyable experience for all participants.

#### **II. LEAGUE MANAGEMENT**

- A. The League management shall be vested in the Board of Directors. The Board will be composed of three persons: the Parks and Recreation Director, the Recreation Supervisor, and the league coordinator, from the City's Parks and Recreation Department. The team's head coaches and team managers shall serve in an advisory capacity to the Board.
  - 1. The Director of Parks & Recreation, and Recreation Supervisor shall appoint the League Coordinator.
- B. Decisions of the Board shall be by simple majority.
  - 1. Voting members who cannot attend may vote through the League Program Coordinator. All policies and procedures approved by the board shall be subject to the approval of the Parks and Recreation Department.
  - 2. Appeals made on decisions of the Board shall be presented in written form to the Board. Final decisions on all appeals shall be vested in the Parks and Recreation Department.

### III. LEAGUE ELIGIBILITY REQUIREMENTS

#### A. To be eligible to swim for a Summer Swim League team, a participant:

1. Must live, work, or attend school within the Lodi Unified School district attendance area.
2. Swimmers who swam in the League last season must swim for the same team unless the League Coordinator authorizes a transfer request, after consideration by the Board. All late sign ups will be designated to a team by the Recreation supervisor.
3. High School swimmers are eligible to compete.
4. May not have been a member of an U.S.S. Swim Club since March 1 of the current year, except for a one-month tryout period.
5. Swimmers may be no older than 18 years of age as of June 1 of the current swim season.

#### B. To be eligible to swim in an event, a swimmer:

1. Will swim in his or her age group as determined by swimmer's age on June 1 of the current year.
2. May move up one age group in relay events only.  
Exception: 6 and Under's may move up one age group in the Dual/Championship meet with the exception of Freestyle and Backstroke events. Breaststroke and Butterfly if not offered in their age group.

### IV. FEES AND CHARGES

Participant registration will only be accepted at the Lodi Parks and Recreation Department. All monies collected shall be used to defray league expenses.

Teams participating with unregistered swimmers will result in DQ team status at Championship Meet.

### V. DUAL MEETS



- A. Both teams shall administer each dual meet and are responsible for the setting up of the meet. (Staffing includes personnel for scoring and awards table, six timers, and one head timer.) Ribbons shall be prepared before each meet.
- B. Both teams shall provide six lane timers and handle the tear down and clean up at the conclusion of the meet.
- C. Each dual meet must follow the order and event numbers as listed by the Board. Only the first heat of each event is official except "6 and Under".
- D. Each swimmer may swim a total of four events, either two individuals and one relay or two individual events and two relays. A maximum of two (2) individual events.
- E. All teams shall keep summary forms. A copy from the "Home" team will be presented to the "visiting" team upon completion of the meet. Times shall be recorded for the first six places. A master copy shall be presented to the League Coordinator by the closing of the first working day after the meet. Copy to parks and recreation.
- F. All dual meets are unofficial, as they qualify swimmers for the Championships; there will be no team scoring in a dual meet.
- G. A swimmer may have one false start. The second false start results in disqualification.
- H. Snack bar at Dual meets will be a pre-season agreement.
- I. Age Groups:
  - 1. 6 and under
  - 2. 7 and 8 year olds
  - 3. 9 and 10 year olds
  - 4. 11 and 12 year olds
  - 5. 13 and 14 year olds
  - 6. 15 to 18 year olds
- J. Teams should be assigned with equal numbers, with a goal of maximum of 120 per team, and equal numbers in each age group.
- K. All 6 and under swimmers are official, but only the best three times receive place ribbons, and all other finishers receive finishers' ribbons.

## VI. CHAMPIONSHIP MEET

- A. To be eligible to swim in the championship meet, swimmers must have swum in at least one sanctioned dual meet.
- B. The Championship Meet begins with the trials, and a swimmer may swim three individual and one relay event or two individual and two relay events.
- C. Each team is allowed two official relays to be declared prior to start of event. All other relays will be exhibition relays (non-scoring).

#### Scoring

##### 1. Individual Events

1st	20 points	9th	9 points
2nd	17 points	10th	7 points
3rd	16 points	11th	6 points
4th	15 points	12th	5 points
5th	14 points	13th	4 points
6th	13 points	14th	3 points
7th	12 points	15th	2 points
8th	11 points	16th	1 point

##### 2. Relays

1st	40 points	9 <sup>th</sup>	18 points
2nd	34 points	10 <sup>th</sup>	14 points
3rd	32 points	11 <sup>th</sup>	12 points
4th	30 points	12 <sup>th</sup>	10 points
5th	28 points		
6th	26 points		
7 <sup>th</sup>	24 points		
8 <sup>th</sup>	22 points		

##### C. Team Responsibilities

- 1. All teams will be assigned their team duties in the Championship meet entry for the set-up, tear down, and clean up.
- 2. Each team shall provide five lane timers and two staff persons for each day of the trials.
- 3. Each team shall provide four lane timers and four staff persons for the final day.
- 4. No changes in races are allowed after the program is printed.

5. All coaches must stay with in designated area.
6. Team entries are due no later than 5:00pm the second (2<sup>nd</sup>) Friday before the Championship Meet.

## VII. AWARDS

### A. Dual Meets

#### Individual Events

1st place...blue ribbon  
2nd place...red ribbon  
3rd place...white ribbon  
Finisher ribbons are given to all 6 and under swimmers who finish their race but do not place 1-3.

#### Relay events

1st place...blue ribbons  
2nd place...red ribbons  
3rd place...white ribbons

### B. Championship Meet

1. Individual medals for first through eight places.
2. Relay medals for each team for first through eight places.
3. Ribbons for 9th through 16th place in individual events.

## VIII. PROTESTS - PENALTIES

- A. A protest may be filed on swimmer eligibility and/or rule violations only and not on the decision or judgment of the Meet officials. Protests shall be presented to the League Coordinator in written form within one working day of the conclusion of the protested meet. If protest is valid, the swimmer shall lose his/her place or award in the event(s).
- B. Championship protests must be in the Parks and Recreation Department office the Friday before the Championship meet.
- C. Any team violating the League by-laws may be penalized as follows:
  1. Forfeit an event.

2. Forfeit points in the championship meet.
3. Replace the Team Coach.

I, \_\_\_\_\_ the head coach for the team \_\_\_\_\_ d  
hereby agree that I have read and understand the Summer Swim League By-Laws and I agree to  
abide by the Rules and Regulations contained within.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Note: this copy is to be kept on file with the City of Lodi Parks and Recreation Department.